

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
October 25, 2016

A public hearing of the Zoning Board of Adjustment was held on Tuesday, October 25, 2016 at 6:30 PM in Room 208, City Hall.

Members in attendance were:

Jack Currier, Vice Chair, Acting as Chair  
Kathy Vitale  
Mariellen MacKay

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Currier explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Currier explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Currier also explained procedures involving the timing light.

- 1. St. Lawrence Joint Rev. Trust (Owners) 17 Montclair Drive (Sheet F Lot 1521) requesting variance to exceed maximum accessory use area, 40% allowed, 48% proposed, to construct an in-ground swimming pool and a pool house. R30 Zone, Ward 1.**

Voting on this case:

Jack Currier  
Kathy Vitale  
Mariellen MacKay

Attorney Robert Parodi, 30 Temple Street, Nashua, NH. Atty. Parodi said that the request is for a pool and a pool house. He showed a rendition of what the structure would look like, it will be 730 square feet, along with an 18'x36' in-ground pool. He said that the lot is three-quarters of an acre, 32,011 square feet. He said that the homes in the Orchid Estates development range from 2,100 - 3,400 square feet, excluding the garages. He said that he understands that the accessory use calculation excludes the garages, however, if the garage could be included, the accessory use area would be at 40%.

Atty. Parodi said that the lot abuts open space land, and two of the houses that abut the subject property have pools. He said

that the total coverage of the lot including the pool and pool house would be less than 4% of the lot. He said that the builder of the pool house would be the same builder that built all the houses in the subdivision, so it'll have the same aesthetic value. He went over the points of law that were stated in the application. He said that the applicant's son had a bad accident, and needs the pool for rehabilitation, and the pool house will serve as his rehab room.

Ms. Vitale asked if the trail easement is on the proposed pool side of the property, or the other side of the lot.

**SPEAKING IN FAVOR:**

Tom St. Lawrence, 17 Montclair Drive, Nashua, NH. Mr. St. Lawrence said that it is on the opposite end.

Mr. Currier asked if the pool house would have plumbing.

Atty. Parodi said it will have a bathroom.

Mr. Currier asked if there is intent for someone to reside there.

Atty. Parodi said that the intention here is for their son to rehabilitate, and the pool will also be used for rehab purposes. He said it will not have a kitchen.

Mr. Currier asked if it would be ok for the Board to put in a stipulation that it will not be a living unit.

Mr. St. Lawrence said it will not be a year-round living facility.

Ms. Vitale said that the lot abuts open land in the back, the request is not much over the limit, and is comfortable with it.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

Ms. Vitale asked about the runoff when the pool is drained, and said that some people pump out to the street.

**MOTION** by Mr. Currier to re-open the public hearing to ask the applicant about the pump out.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 3-0.**

Mr. St. Lawrence said that the pool will not be drained, it will be heated, and covered in the winter. He said if the pool water ever did flood over, there is a detention pond nearby.

**MOTION** by Ms. Vitale to approve the variance application on behalf of the applicant as advertised. She said that the Board finds that the variance is needed to enable the applicant's proposed use of the property, and given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, the lot abuts open space, and it is a slight increase from 40% to 48%, and it will be used for a family member for rehab.

Ms. Vitale said that the proposed use would be within the spirit and intent of the ordinance, and will not adversely affect property values of surrounding parcels, the pool house is being built by the same builder, with the same design as the home, and there are other pools in the area. She said that the Board finds that the request is not contrary to the public interest, and substantial justice is served.

**SECONDED** by Mrs. MacKay.

Mr. Currier said he's concerned that a future owner could morph this into a second unit, and would like to see a stipulation that the applicant is ok with it being just the pool house, it just tightens things up if there are problems in the future.

Mrs. MacKay asked about the new legislation about accessory dwelling units that will take effect next summer.

Mr. Falk said that the direction that the City is most likely going in a direction that accessory dwelling units would not be allowed as separate structures, they'd have to be in the principal structure.

**AMENDED MOTION** by Ms. Vitale to have a special condition that this pool house will not be used as a full-time living space, it'll only have a bathroom, no kitchen facilities as such.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 3-0.**

2. Mary E. Castonguay, Trustee of Henry P. & Mary E. Castonguay Rev. Trust (Owner) Raisanen Homes Elite, LLC (Applicant) 738 West Hollis Street (Sheet D Lot 75) requesting variance to exceed maximum principal structures permitted on one lot, one existing, ten single-family detached units proposed. R9 Zone, Ward 5. [TABLED FROM 9-27-16 MEETING]

Voting on this case:

Jack Currier  
Kathy Vitale  
Mariellen MacKay

**MOTION** by Mr. Currier to remove the case from the Table.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 3-0.**

Attorney Brad Westgate, Winer and Bennett, P.A., 111 Concord Street, Nashua, NH. Atty. Westgate said that on the September 27, 2016 meeting, there was a full Board, five members, and said that they respectfully request that tonight's meeting be tabled to the November 9, 2016 meeting, when hopefully there will be a full five-member Board present. He said that all the Board members had insight and comment into the application, and the meeting took a significant amount of time, with a lot of detail.

Atty. Westgate said that they've amended their plan to reduce the number of units from ten to nine, and changed the limited common area configuration for the various units, and there has been a number of other modifications, and feel it would be respectful for the entire Board to have that opportunity to review the application as amended.

Mr. Currier said he sees some folks in the audience, and is compelled to get their opinion to see if it's burdensome to come back.

Ms. Vitale said she doesn't mind polling the people in the audience, and asked what the difference is between our City with three and the State with five members.

Mr. Currier said that his interpretation is that when the City went to three, it said that the State recommended it, but didn't mandate it.

Mrs. MacKay said if there's people in the audience and want it continued, it's ok and makes sense, but out of respect to the Attorney and the applicants, if everybody's amenable, she said she's fine with tabling it.

Mr. Falk said that if the Board wants to move towards tabling this and checking with the abutters, there shouldn't be any discussion about the case itself, it should just be about future meeting date availability.

Mr. Currier said it's always optimal to have five members sitting on every case, but this is a volunteer Board. He said that the Board has heard a request to table this case to the next meeting. He said he doesn't want to overburden the abutters, and asked if it would be a burden to them to table the case to November 9<sup>th</sup>, Wednesday.

Mr. Falk said it's not up to the abutters to decide whether or not to table a case, it's up to the Board in conjunction with the applicant. He said that in his belief, we can't force an applicant to come and present their case.

David Masceiwicz, 7 Mandinbarb Circle, Nashua, NH. Mr. Masceiwicz said he's fine with tabling the case.

Kim Chapman, 9 Mandinbarb Circle, Nashua, NH. Ms. Chapman asked what would happen if in two weeks, and there is still only three members.

Mr. Currier said that overall, the Board has done a pretty good job with mustering a full Board. He said that no matter what, they will proceed ahead anyways, it can't just be kept back. He said that next time the case will just charge ahead.

Atty. Westgate re-iterated his request that the case be tabled to the November 9, 2016 meeting.

**MOTION** by Ms. Vitale to table the case to a date certain of November 9, 2016, which is on a Wednesday.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 3-0.**

**3. JB Nashua Retail, LLC (Owner) 567 & 569 Amherst Street (Sheet H Lots 625 & 650) requesting the following variances: 1) to allow 2 ground signs per premise, 1 existing - 1 additional ground sign proposed; and, 2) to exceed maximum ground sign area per premise, 150 sq.ft allowed, 150 sq.ft existing - an additional 145 sq.ft proposed. GB Zone, Ward 2. [TABLED FROM THE OCTOBER 11, 2106 MEETING]**

Voting on this case:

Jack Currier  
Kathy Vitale  
Mariellen MacKay

Attorney Morgan Hollis, Gottesman & Hollis, P.A., 39 East Pearl Street, Nashua, NH. Atty. Hollis identified the properties on the map. He said that the focus this evening is Lot 625. He showed the site plan that was approved by the Planning Board with three lots originally, at the corner of Amherst Street and Nimcor Drive.

Atty. Hollis identified that one of the lots has the Convenient MD use, the other has a building that has a barbeque restaurant in it, and the other lot is vacant. He said that when the property was originally approved, the Planning Board approved the subdivision and the site plan showing three different developments. He said that on the site plan, shown on the board, notes a project sign in the corner, another one by the medical office building and one by the retail building, so there were three signs originally presented as part of the site plan before the Planning Board.

Atty. Hollis said that the project has progressed to the point that two buildings are up, and the third one is coming, the second building decided that they didn't want a sign, as it would be of little value. He said that his client owns all three lots, and the buildings are currently under lease.

Atty. Hollis said that they want to put in a corner sign at the corner of Nimcor Drive and Amherst Street. He said that as of today, the property is deemed to be one premise, and said that the Code Section 190-101 says that one ground sign is allowed per premises. He said that is the interpretation that staff has contributed to this site, and because there is one ground sign there, to have any other ground signs, a variance would be required. He said that they only want just this one additional ground sign for the premises as a whole. He said that there is already 150 square feet of area on the existing ground sign, and another 145 square feet is proposed, so that is a variance request as well. He said that the overall variance request is for the number of ground signs, and the area of the ground signs as well.

Atty. Hollis passed out a set of plans that shows the sign in color, and it shows the site distance from the sign going out 25 feet, and it shows that when you pull out in the intersection that you will be able to see in both directions safely. He said that the drawing shows what the sign would look like in color.

Atty. Hollis went over the required points of law for a variance. He submitted a letter from a property appraiser stating that the values of the surrounding properties will not be negatively impacted, and briefly described the contents of the letter. He said that the lots are three separate and distinct lots with no access from Amherst Street, yet, the medical use building has its own free-standing sign. He said that the property is unique, and it needs identification for the back lot. He said that it was always the intent of the applicant to have three separate signs, and somewhere along the way there was a misunderstanding when the Convenient MD sign went in, they didn't realize that this is the only sign they'd be allowed to have.

Mr. Currier said he believes that the Convenient MD sign is very large, and combined with the overage that they have on the building, it looks out of character. He said he feels support for the argument for the corner sign, but is struggling with the size of the sign, it shows a lot of tenants on it. He said the sign looks like it would be for a much larger plaza, versus two smaller buildings. He asked what the need is for the 145 square foot sign.

Atty. Hollis said that he's identified three major tenants, and four sub-tenants, and two less than major tenants down below. He said that as a totality, there are nine total tenant spaces in these two retail buildings, and that's what is being identified on the sign. He said that the sign is designed for visibility and it's the proper size for the tenants.

**SPEAKING IN FAVOR:**

Bill Wilkes, 34 Hansom Drive, Merrimack NH. Mr. Wilkes said he owns JB Nashua Retail. He said that they pride themselves in doing really nice developments, and the sign is expensive and very tasteful. He said it's probably more expensive per square foot than any sign on Amherst Street. He said that the buildings will be very high end, with nice finishes. He said that the sign company put the tenant panels within the sign rendering. He said that they don't want blank spaces on the sign, it will be done nicely and tastefully.

Ms. Vitale asked why they can't do it like 280 Main Street, the business names are on the inside, on a board. She said in a lot of cities, the sign is just the name of the building, or the address of the building, and that's it on the outside, so people who go there just go to "280" and all the individual tenants are listed on the inside.

Mr. Wilkes said that from a marketing and a retail standpoint, if it were an office building that may be appropriate, but from a marketing standpoint, with retail there is a certain amount of impulse for people to see a restaurant name and for them to stop in, also, it's good for people who are not from here. He said retailers rely on the brand name recognition to help draw in customers, especially if they're from out of town.

Atty. Hollis said that as you are driving on Amherst Street, you are looking for a sign, you're not generally looking for a building, and that is why the sign is needed at the corner, so drivers can see it travelling east or west.

Mr. Wilkes said that marketing is so important to the success of a shopping center. He said a sign like the one proposed can generate 10% or 20% incremental business, and it could be the difference between success and not, so the sign is very important.



**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

Mr. Currier asked if there was any consideration to the square footage of the sign, he said that his gut feeling is that it is a lot.

Mr. Wilkes said if it's shrunked down too much, it won't be effective. He said the sign as proposed will help to make the tenants successful. He said the size of the sign would otherwise meet the ordinance, and it would be comparable to other signs on the street.

Atty. Hollis said that they're not asking for a sign that would otherwise be larger then what the Code allows, it's just the second sign.

Mrs. MacKay said that for aesthetics and balance, to have two ground signs of different sizes, it would look off-kilter, and wouldn't look aesthetically pleasing. She said for balance on the site, it makes logical common sense. She said she understands the size they want, because it will be the best for the businesses.

Ms. Vitale said that she wished the three lots all worked together and had a sign for all three buildings, so it would be cohesive in there. She said she didn't have any problem with the sign as it is, it's large but it fits in with other signage in the area, and aesthetically it's ok, and the letter submitted says it won't detract from any property values.

Mr. Currier said it's a tastefully made sign, and is willing to support it.

**MOTION** by Ms. Vitale to approve the variance application on behalf of the applicant as advertised, with both requests considered together. She said that the Board finds that the variances are needed to enable the applicant's proposed use of the property, and given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. She said that as stated by the applicant, it is a unique property, it was originally one large lot that was split into three lots, and now the property

owner is looking to identify the other two buildings there and their tenants.

Ms. Vitale said that the proposed use would be within the spirit and intent of the ordinance, and will not adversely affect property values of surrounding parcels, the Board does have a letter from Chet Rogers that addresses that concern, as there are many signs on Amherst Street that would be in keeping with the proposed sign, and there were sight distances taken, so it should not be contrary to the public interest so drivers should be able to make turns safely from Nimcor Drive. She said that the Board finds that substantial justice is served.

Ms. Vitale said that for special conditions, it has been stated by the applicant that one sign would be for 625 and 650 Amherst Street, so there will not be any additional signage.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 3-0.**

**4. Professional Suites, Inc. (Owner) Angela McCrum (Applicant) 6 Manchester Street (Sheet 67 Lot 98) requesting use variance to use a portion of an existing building for a barbering/cosmetology business. RC Zone, Ward 3.**

Voting on this case:

Jack Currier  
Kathy Vitale  
Mariellen MacKay

Angela McCrum, 4 Merrymeeting Drive, Merrimack, NH. Ms. McCrum said she's requesting a use variance at 6 Manchester Street. She said she's been running her own business within a business for about seven years, by renting a chair in an existing salon now. She said she is very mindful of the products she uses on her clients, and what goes down the drain.

Ms. McCrum said that she's just trying to move her existing client base to the new location. She said that she's not looking for traditional commercial space, where there is high traffic and walk-in's, she said she is just planning on catering to her existing clientele. She said that the space is exactly

what she's looking for, and just needs a sink. She said that there is ample parking for the site.

Ms. McCrum said that the building is already being used for a business. She said that she works 24-30 hours a week, and the business time is from 4:00 p.m. to 9:00 p.m. Tuesday and Thursdays. She said that the parking lot has 16 spaces and a lot of the cars are gone by office hours. She said that in 1994, there was approval for a nail salon in the building. She said that Sweeney & Sweeney Law and Title Services are there, a marketing company, and a realtor office in the building.

Mr. Currier asked where within the building would the salon be located.

Ms. McCrum said when you enter the parking lot, go down the hill, there's a basement right there. She said that there's a fence and a little terrace area, next to there, exactly in back of the building.

Ms. Vitale asked how many existing customers Ms. McCrum has.

Ms. McCrum said around 200, and services about 20 per week. She said at the most, there would be three cars in the parking lot at one time.

Mrs. MacKay said it will be a low-impact use, with minimal traffic and low impact to parking.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

**MOTION** by Mr. Currier to approve the use variance application on behalf of the applicant as advertised. He said that the Board finds that the variance are needed to enable the applicant's proposed use of the property, and given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, the building has been functioning as a business for many years.

Mr. Currier said that the proposed use would be within the spirit and intent of the ordinance, it will be nice to have a viable business within the structure, and will not adversely affect property values of surrounding parcels. He said that the use should not be contrary to the public interest, and the Board finds that substantial justice is served.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 3-0.**

**MISCELLANEOUS:**

**REGIONAL IMPACT:**

The Board did not see any cases of Regional Impact.

**REHEARING REQUESTS:**

None.

**MINUTES:**

9-13-16:

No action taken.

9-27-16:

**MOTION** by Mr. Currier to approve the minutes as presented, waive the reading, and place the minutes in the permanent file.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 3-0.**

**2017 MEETING DATES:**

Mr. Falk said he'd email the proposed meeting dates out for any comments.

**ADJOURNMENT:**

Mr. Shaw called the meeting closed at 8:05 p.m.

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Submitted by: Mrs. MacKay, Acting Clerk.

CF - Taped Hearing